



October 18, 2002

Ms. Tamara Pitts
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2002-5915

Dear Ms. Pitts:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170882.

The City of Fort Worth (the "city") received a written request for any disciplinary or other records pertaining to a named police officer in connection with an incident that occurred at Polytechnic High School. You contend that the requested information is excepted from required disclosure pursuant to section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 143.089 of the Local Government Code provides for the maintenance of civil service files and what may be kept in those files:

- (a) The director or the director's designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:

.....

- (2) any misconduct by the fire fighter or police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department *in accordance with this chapter*

....

(b) A letter, memorandum or document relating to alleged misconduct by the fire fighter or police officer may not be placed in the person's personnel file if the employing department determines that there is insufficient evidence to substantiate the charge of misconduct.

(c) A letter, memorandum, or document relating to disciplinary action taken against the fire fighter or police officer or to alleged misconduct by the fire fighter or police officer that is placed in the person's personnel file as provided by subsection (a)(2) shall be removed from the employee's file if the commission finds that:

(1) the disciplinary action was taken without just cause; or

(2) the charge of misconduct was not supported by sufficient evidence. [Emphasis added.]

Information that subsections 143.089(b) and (c) prohibit from being placed in the civil service file may be maintained in the police department's internal files, as provided in section 143.089(g). This subsection provides:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, *but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer.* The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file. [Emphasis added.]

The city's police department may keep information in these separate, internal files for its own use. Section 143.089(g) makes records kept in the police department's internal files confidential. *Cf. City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946. (Tex. App.--Austin 1993, writ denied) (police department files).

Chapter 143 addresses the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-.055. None of the records you submitted to our office reflects a disciplinary action as contemplated under chapter 143. Accordingly, we conclude that the submitted records must be maintained in the police department's confidential internal file and therefore must be withheld from the public pursuant to section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

Although you request that this office issue the city a “previous determination” regarding the applicability of section 143.089(g), we decline to do so at this time. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

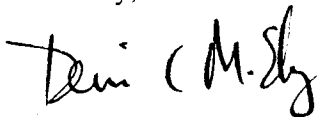
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov’t Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Denis C. McElroy". The signature is written in a cursive, flowing style.

Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/RWP/sdk

Ref: ID# 170882

Enc: Submitted documents

c: Mr. Kent Wooley
2612 Westin Lane
Flower Mound, Texas 75028
(w/o enclosures)